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March 31, 1997

Mr. William F. Caton
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Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Hand Delivered

Re: Reply Comments of ABS-CBN Telecom, North America, Inc.
IB Docket No. 96-261

Dear Mr. Caton:

Transmitted herewith, on behalf of ABS-CBN Telecom, North America, Inc., are an original and nine copies of its Reply Comments in the above-referenced matter.

If you have any questions concerning these Reply Comments, please contact Gregory C. Staple or me.

Very truly yours,

R. Edward Price

Enclosures

cc (w/encl) by hand delivery:
Kathryn O'Brien
International Transcription Service

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	IB Docket No. 96-261
International Settlement Rates	)	

REPLY COMMENTS OF ABS-CBN TELECOM, NORTH AMERICA, INC.

ABS-CBN Telecom, North America, Inc. ("ABS-CBN Telecom"), by its attorneys, hereby submits its reply comments in the above-captioned proceeding. ABS-CBN Telecom notes that while there is broad support for lower international accounting rates among those parties filing comments, there is also widespread criticism of the Commission's proposed benchmark methodology and timetable. In this reply, ABS-CBN Telecom expands upon certain points made in its comments regarding U.S.-Philippine settlement rates and also addresses the comments of other carriers, which like ABS-CBN Telecom could be unfairly disadvantaged by mechanical adoption of the FCC's proposed benchmarks.

ABS-CBN Telecom once again submits that there is no record basis for the adoption of new benchmark rates for the U.S.-Philippine route in this docket. The issue accordingly should be deferred and taken up, if at all, on a country- or carrier-specific basis in connection with a relevant Section 214 application or petition seeking relief from the agency's International Settlement Policy (ISP).

I. The FCC's Benchmark Methodology Has Been Shown To Be Inappropriate For Competitive Markets And To Radically Understate The Actual Termination Costs Of Competing Carriers In The Philippines

As ABS-CBN Telecom made clear in its comments, the "national extension" cost used in calculating the Commission's proposed benchmark for the Philippines fails to take into account the $.35 per minute rates which ABS-CBN Telecom and other new international carriers in the Philippines must pay to the Philippine Long Distance Telephone Company (PLDT) for call termination.[1] Lowering settlement rates to the Commission's proposed benchmark would therefore have the unintended effect of squeezing competitors out of the international services market in the Philippines.[2]

As ABS-CBN Telecom also stated in the first round of comments, the FCC's Chairman has sought to make an example of the Philippines as an emerging competitive success story.[3] That view is supported by the following new information regarding the Filipino market, which ABS-CBN Telecom hereby submits to augment the record. In 1996 alone, nine local exchange carriers installed over 1.5 million lines, doubling the number of lines in the Philippines to four per 100 persons.[4] Under the current national telephone program in the Philippines, 7.3 million

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[1] See Comments of ABS-CBN Telecom at 4-5.

[2] See id. at 3-5. TRICOM, S.A., a competing international service provider in the Dominican Republic, described an identical situation in its home country. There, an aggressive former monopolist, CODETEL, charges access rates far in excess of the Commission's proposed national extension benchmark. See Comments of TRICOM, S.A., at 2-3.

[3] See Comments of ABS-CBN Telecom at 8-9.

[4] Telenews Asia, Feb. 12, 1997, at 6. However, a later issue of Telenews Asia notes that of the new carriers in the Philippines, "only International Communications

(continued...)

lines — or 10 per every 100 people — are expected to be operational by 1998.[5] The continuing success of this network construction effort, however, depends on a reasonably stable international settlement regime. If the Commission acts too quickly, and without enough information, the Philippines' road to success, as told by the Chairman, could well be blocked.

The Commission's proposed benchmark methodology also fails to account for the fact that the U.S. carrier subject to the benchmark rates may not be vertically integrated or associated with a dominant foreign carrier. For example, although AT&T, the largest U.S. carrier, is a WorldPartner ally of PLDT — the dominant Philippine carrier — there are many competitive Philippine international carriers with no U.S. affiliate. And although other carriers, such as ABS-CBN Telecom have Filipino affiliates, neither carrier has market power. The failure of the FCC's notice to distinguish between the different competitive positions of such carriers and the economic conditions they face means that there is insufficient information in the record to establish a country-wide benchmark for the Philippines at this time.

Moreover, while the Philippines is ostensibly a largely deregulated marketplace, PLDT still operates as a virtual monopoly, holding more than 90% of the market for international traffic to the United States and possessing about 85% of all telephones in the country. Consequently, in 1995 at least $135 million of approximately $160 million of settlement revenue for U.S. calls to the Philippines was paid to PLDT. Competing carriers thus receive a

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[4](...continued)
Corporation [the ABS-CBN affiliate] fulfilled its roll out programme . . . completing 338,879 lines against its obligation of 300,000 lines." Telenews Asia, Feb. 26, 1997, at 5.

[5] Telenews Asia, Feb. 12, 1997, at 6.

very small portion of settlement payments, and a reduction would only impair their ability to provide effective competition. Any change in the current benchmark regime is likely to be counterproductive unless it is coupled with a country-specific investigation and other measures to foster a more competitive market structure in the Philippines.[6]

II. Accounting Rate Benchmarks Are Not Necessary To Prevent Unfair Competition in the U.S. Market

The recent completion of the World Trade Organization (WTO) agreement on telecommunications may spur additional foreign carriers to establish affiliated international carriers in the United States. Although unfair competition must always be guarded against, it would be shortsighted for the Commission to assume that lower accounting rate benchmarks are always necessary to establish a level playing field.

While it is true that a foreign monopoly carrier entering the U.S. market might be able to use above-cost settlement payments from its home market to cross-subsidize its new U.S. operation, this is not a possibility for competing carriers from countries such as the

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[6] For example, consider a "glide path" scenario under which the U.S.-Philippine accounting rate is lowered at a deliberate pace. Over the next few years PLDT would still receive approximately of 90% of the settlement revenues, and, as is now the case, would likely continue to use these revenues to aggressively expand into new markets. In contrast, competing Philippine carriers would be forced to build their businesses in an environment where they have no control over costs, spending large amounts of capital and incurring debt obligations to complete their local exchange infrastructure. Even as accounting rates are reduced, PLDT would still maintain control over local access and would continue receiving large sums of money for the provision of that service. New carriers, caught in the margin squeeze, would not be able to maintain the cash flow requirements to run their local exchange services, and PLDT would continue to control the other profitable value added telecommunications services. In this scenario, many new carriers may be forced into bankruptcy, thus allowing PLDT to buy them out at a substantial discount. The Philippines would then be returned to a telecommunications monopoly.

Philippines. As explained above, ABS-CBN Telecom could not cross-subsidize its foreign affiliate with U.S. settlements, even if it wished to, because the per minute U.S. settlement rates are barely enough to cover its per minute pay out to PLDT for local termination services.[7] In this case, prior to domestic tariff rebalancing, lowering benchmark rates for the Philippines is unnecessary — and indeed will be counterproductive — in combating anticompetitive practices in the U.S. market.

From the standpoint of ABS-CBN Telecom and other smaller U.S. international carriers, the "subsidies" that are most likely to frustrate new competition in the U.S. market are those which the major U.S. international carriers obtain by virtue of their large domestic long-distance businesses. By spreading marketing, billing and joint network costs over both domestic and international offerings furnished to 10 million or more subscribers, any foreign carrier faces a cost-structure for international service which may be difficult to match. Moreover, the major U.S. carriers are likely to have much more pricing flexibility on a given route than a smaller carrier, with limited facilities-based service, because they can use savings on one set of routes (e.g., where accounting rates have fallen) to offer promotional rates on another route or offer services on a few routes below their net settlement cost, so as to win market share from new carriers. The failure of the FCC's notice to address these issues is regrettable and likely raises a much greater risk to competition in the U.S. market than the export of above-cost settlements which the FCC has identified.

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[7] See Comments of ABS-CBN Telecom at 4-5.

III. The Proposed Benchmark For The Philippines Is Impermissibly Based Upon Private, Non-Record Data Supplied By A Chief Competitor To ABS-CBN Telecom And Is Therefore Unreasonable

In calculating the national extension cost for the Philippines, the Commission has relied on call distribution data supplied by AT&T,[8] a competitor of ABS-CBN Telecom in the United States and an ally of PLDT, the former Philippine monopoly and a competitor of ABS-CBN Telecom's Filipino affiliate. This reliance indicates that the benchmark set for the Philippines is unreasonable and therefore in excess of the agency's powers.[9]

In support of the Commission's use of a cost surrogate, AT&T cites NARUC v. FCC.[10] There the Court gave the Commission some latitude in establishing a temporary surcharge on private lines for the cost recovery of interstate equipment. The Commission had used its best judgment to formulate a per-line surcharge pending the development of charges by the carriers themselves,[11] and the court accepted its action, stating that it had been "reasonable under difficult circumstances."[12] However, in NARUC the Commission formulated a surrogate based upon its experience (in the absence of data),[13] not upon undisclosed data submitted by an

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8 Id. at 6.

9 See id. at 7-8 & nn.16-18.

10 737 F.2d 1095, 1138-42 (D.C. Cir. 1984)

11 Id. at 1138-39; see also MTS/WATS Market Structure, Memorandum Opinion and Order, 97 F.C.C.2d 682, 719-21 (1983).

12 737 F.2d at 1141.

13 Id. at 1138-39.

interested party, as it does here.[14]

The International Bureau's estimate for the national extension cost in the Philippines is based upon historical data supplied by AT&T which reflect the heavily urban (Manila) distribution of PLDT's historic base of access lines. New carriers in the Philippines, however, have an obligation to serve outlying areas, and these data fail to account for the more rural — and therefore higher cost — access line distribution of PLDT's emerging competitors (such as ABS-CBN Telecom's Filipino affiliate). For these reasons, the AT&T and FCC data likely are biased, understate actual termination costs in the Philippines and are therefore unreasonable under NARUC.

The only way for the Commission to provide a reasonable surrogate for the range of actual call-termination costs in the Philippines and elsewhere to conduct an analysis country-by-country, using the type of evidence submitted herein by ABS-CBN Telecom. Only this approach is truly reasonable under the circumstances and can lead to international settlement

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[14] AT&T also cites ICORE, Inc. v. FCC, 985 F.2d 1075 (D.C. Cir. 1992), in support of the Commission's proposed surrogate. See Comments of AT&T Corp. at 27. However, ICORE, like NARUC, is inapposite. The Commission's surrogate in ICORE was based on data on which the Commission had invited extensive public comment. See ICORE, 985 F.2d at 1078. The Court found a "substantial basis for the Commission's decision" because: (1) petitioners had failed to find a methodological flaw in the data during the public comment period; and (2) the record contained "substantial and detailed material that was considered by the Commission in reaching its decision . . . ." Id. at 1080. This cannot be said of the calling distribution data supplied by AT&T on which the Commission's has relied in formulating the national extension component of the TCP.

reform that is fair, consistent with its statutory responsibilities and which will withstand judicial review.[15]

Respectfully submitted,

ABS-CBN TELECOM,
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March 31, 1997

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[15] See, e.g., MCI Telecommunications Corp., et al. v. FCC, Nos. 96-1459 et al. (D.C. Cir. Feb. 13, 1997) (order granting stay of FCC's Tariff Forbearance Order based on assertions by MCI and others that FCC had over stepped its statutory mandate); Iowa Utilities Board, et al. v. FCC, No. 96-3321, et al. (8th Cir. Oct. 15, 1996) (order granting stay of FCC's Interconnection Order based on argument that FCC had violated statute and acted arbitrarily and capriciously), modified, No. 96-3321, et al. (8th Cir. Nov. 1, 1996).

CERTIFICATE OF SERVICE

I, Barbara Frank, a secretary in the law firm of Koteen & Naftalin, L.L.P. do hereby certify that copies of the foregoing "REPLY COMMENTS" were mailed first-class U.S. Mail, postage prepaid, this 31st day of March 1996 to the following:

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